Supreme Court, U.S.
FILED
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No. 00-

IN THE

Supreme Court of the United States

GLENN ALLEN WOLFGANG,

Cross-Petitioner,

v.

RAYMOND A. BERG, JR.,

Cross-Respondent.

ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) Can the server of a facially valid arrest warrant be sued and held liable under 42 U.S.C. § 1983 when a clerical error in the production of the warrant, with which the server had no involvement and about which the server had no knowledge, causes the warrant to name and the server to arrest someone other than the person for whom probable cause existed to arrest?

(2) Does the arrest and/or weekend incarceration of a person pursuant to a facially valid arrest warrant give rise to a cause of action under 42 U.S.C. § 1983 against the server of the warrant when the name of the person arrested was included on the warrant as a result of a clerical error in the production of the warrant, with which the server had no involvement and about which the server had no knowledge, instead of the person for whom probable cause existed to arrest?

(3) Does a clerical error in the production of an arrest warrant, with which the warrant server had no involvement and about which the server had no knowledge, mean under federal law that the otherwise facially valid warrant cannot function as probable cause for the server to arrest the person named in the warrant?

(4) Does the server of a facially valid arrest warrant have qualified immunity from liability under 42 U.S.C. § 1983 when the person arrested was named in the warrant due to a clerical error in the production of the warrant with which the server had no involvement and about which the server had no knowledge?

LIST OF PARTIES

Except for defendant Debbie Benton, who was dismissed by stipulation in the District Court, the parties to the proceedings in the United States Court of Appeals for the Third Circuit are as follows.

Raymond A. Berg, Jr. ("Berg"), the plaintiff in the District Court and the appellant in the Court of Appeals filed a petition for writ of certiorari with respect to the decisions in favor of Richard R. Gardner ("Gardner") and Ginny Demko ("Demko"). Berg's petition has been docketed at No. 00-589.

Glenn Allen Wolfgang ("Wolfgang"), a defendant in the District Court and an appellee in the Court of Appeals files this cross-petition for writ of certiorari with respect to the Court of Appeals' rulings against him.

The County of Allegheny ("Allegheny County") and the Allegheny County Adult Probation Services ("ACAPS"), defendants in the District Court and appellees in the Court of Appeals, are expected to file a certiorari petition with respect to the Court of Appeals' rulings against them.

None of the parties is required to make a corporate disclosure statement under your Honorable Court's Rule 29.6.

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OPINIONS BELOW

The opinion of the Court of Appeals has been reported, *Berg v. County of Allegheny*, 219 F.3d 261 (3d Cir. 2000). The Court of Appeals' opinion, one of the District Court decisions and the denial of rehearing are included in the appendix filed by lead petitioner Berg. The opinion of the District Court as to cross-petitioner Wolfgang was not reported and was omitted from the Berg petition. A copy of that opinion is included in the appendix to this petition.

STATEMENT OF JURISDICTION

The Court of Appeals filed its decision on July 17, 2000. Berg, Wolfgang, Allegheny County, and ACAPS filed timely petitions for reargument of that decision. The Court of Appeals denied those reargument petitions on August 17, 2000. Your Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Constitution, Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdictions the equal protection of the laws.

42 U.S.C. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Jurisdiction of the Lower Courts

The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. The Court of Appeals had jurisdiction under 28 U.S.C. § 1291.

The Material Facts

On December 30, 1994, Wolfgang, a duly elected Constable of the Township of Manor, County of Westmoreland learned that there was an outstanding bench warrant issued for the arrest of Berg for violation of probation (A. 480-481, 565). Unbeknownst to Wolfgang, the warrant had been intended for a Paul Banks, but mistakenly generated for Berg. The probable cause to arrest Banks for violation of his parole has never been at issue in this case.

The warrant was issued on August 3, 1994 and listed in the "Warrant Book" of the Sheriff's Department of Allegheny County (A. 480-481). The warrant listed Berg's last known address as 3551 Marion Avenue, Finleyville, Washington County, Pennsylvania 15332 (A. 565). The warrant was issued by Administrative Judge David S. Cercone of the Court of Common Pleas of Allegheny County (A. 565), and directed the arresting officer to place the named individual under arrest and summarily return the individual to the county in which the warrant was issued (A. 466-467).

The warrant was requested by Gardner, the Supervisor of ACAPS. Wolfgang did not know Berg and had no role in requesting or producing the warrant for his arrest. Wolfgang did not know and had no reason of knowing that the warrant

had been intended for another person; that the person who produced the warrant mistakenly typed the case number for the intended arrestee, but failed to correct her mistake; or that the system used in the production of the warrant had no secondary checks against such mistakes. According to Demko, she had never made such a mistake in issuing over 500 warrants per month since 1989, 219 F.3d at 267.

Wolfgang undertook the execution of the arrest warrant and proceeded to Berg's last known address as indicated on the warrant (A. 493). Because Berg was not present at the Finleyville address, which appeared to be vacant, Wolfgang telephoned Berg at the number that Wolfgang had earlier retrieved via his own computer for directions to Berg's residence (A. 497, 506-507). In response to Wolfgang's explanation for the call and the request for directions, Berg claimed that he was not aware of an outstanding warrant against him but gave Wolfgang directions to his home anyway (A. 508).

When Wolfgang arrived at Berg's residence he presented Berg with the warrant (A. 516-517; A. 178-180). Berg confirmed that his name, date of birth and social security number were correctly listed on the warrant, but asserted that he had fulfilled his probation and that the warrant was in error (A. 517, 521; A. 177-180). While at the Berg residence, Wolfgang called the Sheriff's Department, which confirmed that the warrant was active and valid, and he arrested Berg (A. 517). Berg offered to show Wolfgang the papers that Berg believed supported his claimed innocence of the probation violation charge. None of those papers, however, was conclusive. Wolfgang allowed Berg to notify his lawyer and to bring the papers along with him.

After escorting Berg to his vehicle, Wolfgang drove Berg to the Public Safety Building of Allegheny County where the arrest warrant was processed (A. 184-186, 533-535). Following the identification and processing, Berg was transported by Wolfgang to the Allegheny County Jail (A.186, 540). Upon arriving at the jail, Wolfgang surrendered Berg along with his relevant processing documents to the Allegheny County prison authorities (A.540-542).

Three days later, on January 3, 1995, Berg was released from custody (A. 361-364). In an internal investigation following this incident, Allegheny County employees discovered that Demko, the minute clerk who produced the warrant for Berg, had committed a clerical error by transposing the criminal complaint number of Banks, the intended subject of the warrant, with that of Berg, and that she entered Banks' address as listed on the paper from which she generated the warrant for Berg, believing that the address on the warrant paper was more accurate that the one that she retrieved from the county's computer information system (A. 593-599, 612-613; A. 364-366).

Berg initiated this action by filing a civil action complaint in the Court of Common Pleas of Allegheny on December 26, 1996. Because the complaint alleged federal civil rights violations, Allegheny County and ACAPS removed the case to the United States District Court for the Western District of Pennsylvania (A.3). Berg's Section 1983 claims are the only claims that remain in this case, 219 F.3d at 268 ("On appeal, Berg presses only his § 1983 claim.").

Berg's amended complaint alleged, *inter alia*, that defendant Wolfgang violated Berg's civil rights by placing

him under false arrest, falsely imprisoning him following the arrest, and maliciously prosecuting an action against him (A.26-32).

On September 23, 1998, the District Court granted summary judgment in favor of Wolfgang, Demko, Gardner, Allegheny County, and ACAPS. (A.627). Berg appealed to the United States Court of Appeals for the Third Circuit (A.647).

The Court of Appeals held that the District Court erred by granting summary judgment to Wolfgang, Allegheny County and ACAPS, holding that they could be liable because the mistake made by Demko and undiscovered by Gardner rendered the arrest warrant void of probable cause to arrest Berg, 219 F.3d at 271. However, the Court of Appeals affirmed the summary judgment granted to Demko and Gardner, 219 F.3d at 274, 275.

The Court of Appeals remanded Wolfgang's qualified immunity defense, but channeled that issue to the consideration of whether Wolfgang's conduct was reasonable in light of the report submitted by Berg's expert that it was unreasonable for Wolfgang to execute the warrant without conducting a further investigation in light of

> the age of the warrant, the invalid address, Berg's socio-economic status, Berg's documentation that he had completed his probation, Berg's cooperativeness, the fact that Berg had a driver's license despite allegedly being on parole for DUI, the fact that Berg did not flee or ask his guests to leave despite having ample warning of Wolfgang's arrival, and the nonviolent nature of the crime.

219 F.3d at 273. The Court of Appeals also remanded Berg's claim that policies and customs of Allegheny County and ACAPS violated Berg's rights and that they acted with "deliberate indifference". 219 F.3d at 274.

REASONS FOR GRANTING THE WRIT

Your Honorable Court should grant review of, and ultimately reverse the Court of Appeals' decision against Wolfgang, because that decision charts a course that is both internally inconsistent and fundamentally incompatible with the controlling principles that your Court and nearly all other Courts of Appeals have recognized and upheld. The Court of Appeals' decision threatens to upset the practical balance that those principles strike between society's interests in the execution of facially valid warrants and other judicial directives and the individual's interest in freedom from unreasonable arrests.

Your Honorable Court applied those principles and struck that balance 15 years ago in *United States v. Hensley*, 469 U.S. 221 (1985). In that case, your Court recognized, in dealing with inter-departmental police bulletins or flyers, that "[t]he same interests that weigh in favor of permitting the police to make a *Terry* stop to investigate a past crime, support permitting police in other jurisdictions to rely on flyers or bulletins in making stops to investigate past crimes," 469 U.S. at 232 (citation omitted). More to the point of the case at bar, your Court stated that officers who act on objectively reliable flyers or bulletins will not be held liable for effecting a stop even though that stop may violate the suspect's Fourth Amendment rights, when the flyers or bulletins were issued by others in the absence of a reasonable suspicion that the stopped individual had been involved in the commission of a crime, 469 U.S. at 232:

> In such a situation, of course, the officers making the stop have a good-faith defense to any civil suit. See *Scheuer v. Rhodes*, 416 U.S. 232 (1974); *Pierson v. Ray,* 386 U.S. 547 (1967); *Turner v. Raynes*, 611 F.2d 92, 93 (CA5), cert. denied, 449 U.S. 900 (1980) (officer relying in good faith on an invalid arrest warrant has defense to civil suit).

Hensley clarified what your Honorable Court had stated 14 years previously in *Whitesley v. Warden*, 401 U.S. 560, 568 (1971), regarding the reliance that other officers could place on a radio bulletin about an outstanding arrest warrant and the effect of that reliance. The responding officers could legitimately act on that report, although their reliance could not cure a deficiency in the actions of the instigating officers, 401 U.S. at 568:

> Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.

Both *Whitesley* and *Hensley* made it clear that the responding officers did not have to investigate or question the bases for the suspicion for a stop or the probable cause for an arrest, and that the responding officers would not be held responsible even if there were no reasonable suspicion or probable cause. Unfortunately, the Court of Appeals'

decision fails to perceive and consequently blurs the distinction between the actions of those who instigate the arrest and those who effect it.

Under *Whitesley* and *Hensley*, those who act in reliance upon the existence of valid reasons for a stop or an arrest cannot be held liable, although their actions will not insulate the instigators from the consequences of their failure to abide by the Fourth Amendment. However, under the Court of Appeals' decision, just the opposite is true: one who executes a facially valid warrant can be held liable when the warrant names the wrong person due to the mistakes of others, while those who mistakenly produced the warrant do not have to answer for their error.

In holding that the server of a facially valid arrest warrant can be held liable when another mistakenly includes the name of an innocent person instead of the one against whom probable cause existed for the warrant, the Court of Appeals' decision also stands antithetically against your Honorable Court's decision in *Baker v. McCollan*, 443 U.S. 137 (1979), its own prior decisions, and the decisions of the majority of the other Courts of Appeals.

Ironically, the Court of Appeals' opinion noted those decisions that point to a holding in favor of petitioner Wolfgang, but it then mistakenly charted a sharp departure from them to hold Wolfgang liable, 219 F.3d at 272.

The Court of Appeals' decision first recognized that your Honorable Court ruled in *Baker* that those who execute facially valid arrest warrants can reasonably assume the existence of probable cause to arrest the person named in the warrants, and that the arresting officers do not have to

investigate the validity of those warrants in the face of the arrestees' protestations of innocence, 219 F.3d at 272-273:

> Ordinarily, it is reasonable for an officer to assume that a warrant has been issued for probable cause. As the Supreme Court explained in Baker,
>
> > Given the requirements that arrest be made only on probable cause and that one detained be accorded a speedy trial, we do not think a sheriff executing an arrest warrant is required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent.

443 U.S. at 145-46.

Next, the Court of Appeals' decision recognized that its own precedents exonerated those like petitioner Wolfgang who executed facially valid warrants, even though others procured those warrants without probable cause, 219 F.3d at 273:

> Therefore, we have generally extended immunity to an officer who makes an arrest based on an objectively reasonable belief that there is a valid warrant. See *Rogers* [*v. Powell*], (3d Cir. 1997), 120 F.3d [446] at 456 (3d Cir. 1997) (concluding that a state trooper who was inaccurately told by another trooper that there was a warrant for the plaintiff's arrest was immune from suit);

> *Capone v. Marinelli*, 868 F.2d 102, 105-06 (3d Cir. 1989) (holding that arresting officers were immune in light of a bulletin correctly reporting the existence of an arrest warrant "as well as the nature of the alleged offenses [including child kidnapping] and the fact that a young child was in possible danger"); cf. *Groman v. Township of Manalapan*, 47 F.3d 628, 635 n.10 (3d Cir. 1995) (affirming summary judgment in favor of officers who arrested plaintiff after being told by another officer that plaintiff had assaulted her).

The Court of Appeals' decision also recognized that other Courts of Appeals refused to hold persons such as petitioner Wolfgang liable for effecting arrests in reliance on facially valid warrants despite flaws in the production of those warrants, 219 F.3d at 273:

> Other courts of appeals have adopted the same rule. See *Pickens v. Hollowell*, 59 F.3d 1203, 1207-08 (11th Cir. 1995); *Salmon v. Schwarz*, 948 F.2d 1131, 1140-41 (10th Cir. 1991); *Bennett v. City of Grand Prairie, Tex.*, 883 F.2d 400, 408 (5th Cir. 1989); *Barr v. Abrams*, 810 F.2d 358, 362 (2d Cir. 1987).

In addition to those cases and its own precedents,[1] the Court of Appeals' decision as to petitioner Wolfgang also departs from the majority of comparable cases that other Courts of Appeals have decided, such as:

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1. *Rogers v. Powell*, 120 F.3d 446, 456 (3d Cir. 1997); *Capone v. Marinelli*, 868 F.2d 102, 105-06 (3d Cir. 1989); and, *Groman v. Township of Manalapan*, 47 F.3d 628, 635 n.10 (3d Cir. 1995).

Whiting v. Kirk, 960 F.2d 248 (1st Cir. 1992) (no liability for constable who effected an arrest pursuant to a facially valid writ that had mistakenly been completed to include a debtor's body warrant and issued by a court clerk without judicial review);

Porterfield v. Lott, 156 F.3d 563 (4th Cir. 1998) (immunity for arrest pursuant to warrant obtained by investigating officers); *Mitchell v. Aluisi*, 872 F.2d 577, 597 (4th Cir. 1989) (arrest based on recalled bench warrant);

Blackwell v. Barton, 34 F.3d 298 (5th Cir. 1994) (immunity for arrest of mistakenly identified person based on warrant that was not used in effecting the arrest);

Masters v. Crouch, 872 F.2d 1248 (6th Cir. 1989) (arrest pursuant to warrant issued on mistake of violation of hearing notice);

Moiser v. Blum, 875 F.2d 202, 204 (8th Cir. 1989) (arrest based on facially valid, but incorrect release form);

Beard v. Goslin, 24 F.3d 110, 114 (10th Cir. 1994) ("To impeach an otherwise valid warrant on the ground that it was issued on specified information that was false and critical to the finding of probable cause requires proof that the affiant seeking the warrant knew that the challenged information was false or that he had a reckless disregard for its truthfulness.").

Despite the positive guidance from your Honorable Court, from prior decisions of the Third Circuit, and from decisions of other Courts of Appeals that precluded any duty owed by petitioner Wolfgang to question the bases for and to withhold the execution of the facially valid arrest warrant, the Court of Appeals' opinion proceeded to create such a duty and to impose it upon petitioner Wolfgang. To reach that objective, the Court of Appeals erroneously invoked *Malley v. Briggs*, 475 U.S. 335 (1986), and *Yancey v. Carroll County*, 876 F.2d 1238, 1243 (6th Cir. 1989), and mistakenly found solace in Berg's expert's report, 219 F.3d at 273.

However, neither *Malley*, *Yancey*, nor the expert's report supersede the controlling decisions from which the Court of Appeals departed. *Malley* and *Yancey* addressed the responsibilities of those who improperly procure arrest warrants or those who execute warrants knowing that they were improperly obtained, *see Jones v. City of Chicago*, 856 F.2d 985, 994 (7th Cir. 1988) (applying *Malley* standard to arresting officer); *Bennett v. City of Grand Prairie*, 883 F.2d 400, 408 (5th Cir. 1989) (same). Those cases cannot apply to petitioner Wolfgang, because he plainly had no involvement in the production of the warrant and no knowledge of the mistakes made by Demko and Gardner.

The Court of Appeals' reliance on Berg's expert's report is also erroneous. Apart from the fact that the report fails to cite any controlling rule, regulation, or precedent to support its conclusion that Wolfgang acted unreasonably, the thrust of the report and the reasons that it lists for its holding that Wolfgang should have declined to execute the facially valid warrant contradict established Fourth Amendment principles and the record facts of this case.

Probable cause exists when an officer makes an arrest pursuant to a warrant that facially meets the requirements of the Fourth Amendment. *Baker*, *supra*, 443 U.S. at 144; *Dowling v. City of Philadelphia*, 855 F.2d 135, 141 (3d Cir. 1988); *United States v. Doe*, 703 F.3d 745, 747 (3d Cir. 1983). A warrant facially satisfies the requirements of the Fourth Amendment if it contains "the name of the defendant or, if his name is unknown, any name or description by which he can be described with reasonable certainty." *United States v. Doe*, 703 at 747; *Kis v. County of Schuylkill*, 866 F. Supp. 1462, 1469 (E.D. Pa. 1994); Fed. R. Crim. P. 4(c)(1). "Beyond that, however, a warrant that correctly names the person to be arrested generally satisfies the requirements of the Fourth Amendment." *Kis*, 866 F. Supp. at 1469; *Cooper v. City of Chester*, 810 F. Supp. 618, 621 (E.D. Pa. 1992); *accord*, *Powe v. Chicago*, 664 F.2d 639, 645 (7th Cir. 1981); *Cerva v. Fulmer*, 596 F. Supp. 86 (E.D. Pa. 1984) (address in an arrest warrant irrelevant to its validity and to the arrest itself where the warrant conforms to the Fourth Amendment); *United States v. Carter*, 756 F.2d 310 (3d Cir. 1985) (mere technical error on the face of an arrest warrant will not automatically invalidate the warrant).

Petitioner Wolfgang arrested Berg pursuant to a warrant that facially conformed to the requirements of the Fourth Amendment and was in full force and effect. (A.480-481, 498-490, 517). In addition to Berg's name, the warrant listed his correct birth date and his social security number, which Berg himself confirmed to Wolfgang at the time of the arrest (A. 175). On at least two occasions, when Wolfgang picked up the warrant and later when he contacted the Sheriff's Department at the service of the warrant, Wolfgang was informed that the warrant was active. (A.480-481, 498-490, 517). That the warrant listed an

incorrect address "is irrelevant to its validity and to that of the arrest itself." *Cerva*, 596 F. Supp. at 90. The Fourth Amendment requires only that a warrant contain "the name of the defendant." *United States v. Doe*, 703 F.2d at 747. The face of the warrant named Berg and Berg was indeed the person whom Wolfgang arrested.

That Berg may have been innocent of the charge mentioned in the warrant; that Berg may have protested and offered to prove his innocence; and that Wolfgang may have had an opportunity to "look into Berg's claims," 219 F.3d at 273, as well as the other factors that the Court of Appeals extracted from Berg's expert's report, simply do not serve to hold Wolfgang liable where the decisions of your Honorable Court and the majority of the Courts of Appeals have refused to find liability.

The mistaken identity that triggered the arrest and the incarceration, and the initial protestations of the arrestee were insufficient to create liability in *Baker*, *supra*, 443 U.S. at 145. "The Constitution does not guarantee that only the guilty will be arrested. If it did, § 1983 would provide a cause of action for every defendant acquitted . . . indeed for every suspect released," *Id.* Moreover, an officer executing an arrest warrant is not "required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent," *Id.*, 443 U.S. at 145-46; *see also*, *Hamill v. Wright*, 870 F.2d 1032, 1036 (5th Cir. 1989) ("[i]t would be a strange and unworkable rule that required a sheriff to determine the ultimate legal validity of every warrant — regular on its face and issued by the proper authority — before serving it").

Under the controlling law, when Wolfgang matched Berg with the person identified on the warrant, Wolfgang had no duty to second guess the warrant. Many courts have concluded with some regularity that relatively minor discrepancies in physical features or other data do not render unreasonable an arrest pursuant to a facially valid warrant. *See White v. Olig*, 56 F.3d 817, 820 (7th Cir. 1995); *Rodriguez v. United States*, 54 F.3d 41, 46-47 (1st Cir. 1995); *Blackwell v. Barton*, 34 F.3d 298, 304 (5th Cir. 1994); *Thompson v. Prince William County*, 753 F.2d 363, 364-65 (4th Cir. 1985); *Johnson v. Miller*, 680 F.2d 39, 41 (7th Cir. 1982).

Berg's production of papers and a driver's license did not create a duty that required him to question and investigate the subsurface validity of the warrant. The papers were not conclusive and the driver's license could have been a fake, *Hill v. California*, 401 U.S. 797 (1971) (innocent arrestee's production of identification did not impair the reasonableness of the police officers' action in that many arrestees attempt to avoid arrest by producing false identification). The duty to investigate the bases for the warrant did not fall upon Wolfgang, *Hill v. Bogans*, 735 F.2d 391 (10th Cir. 1984) (officers not required to investigate facially valid warrant). His duty was simply to execute the command of the court that issued the warrant.

The Court of Appeals chose not to follow what your Honorable Court said in *Baker*. Instead, the Court of Appeals relegated *Baker* as applicable only to incarcerations, not to arrests, 219 F.3d n.6 at 271. Tellingly, your Court made no such bright line distinction in *Baker*, and the Court of Appeals failed to follow its own parsing of *Baker* and Berg's cause of action by restricting Wolfgang's liability to Berg's arrest.

Moreover, while your Court assumed the validity of the arrest warrant in *Baker*, that assumption does not present the point of distinction and the line of demarcation fashioned by the Court of Appeals. The facial validity of the warrant in this case cannot be legitimately challenged. It thus should have operated to exonerate Wolfgang as did the unchallenged warrant in *Baker*.

Because the warrant mistakenly named Berg, the Court of Appeals regarded the warrant as lacking probable cause even for one who was dependent upon and guided only by the facial validity of the warrant and its application to the person arrested. That ruling holds those who rely on the face of the warrant liable regardless of the objectively reasonable basis for their actions. The Court of Appeals' decision thus reverts Fourth Amendment jurisprudence back to the types of *per se* exceptions and liabilities that your Honorable Court rejected 13 years ago in *Anderson v. Creighton*, 483 U.S. 635 (1987). Although *Anderson* dealt with warrantless searches for fugitives, its principles apply to arrests under facially valid warrants.

While it is true that the Fourth Amendment speaks in terms of "unreasonable" seizures and requires warrants to issue on probable cause, *Anderson* instructs that not all officials are to be held liable for all unreasonable seizures or for all warrants that lack probable cause.

> The fact is that, regardless of the terminology used, the precise content of most of the Constitution's civil-liberties guarantees rests upon an assessment of what accommodation between governmental need and individual freedom is reasonable. . . . We have frequently observed, and

> our many cases on the point amply demonstrate, the difficulty of determining whether particular searches or seizures comport with the Fourth Amendment. *See, e.g., Malley, supra*, at 341. Law enforcement officers whose judgments in making these difficult determinations are objectively legally reasonable should no more be held personally liable in damages than should officials making analogous determinations in other areas of law.

483 U.S. at 643-644.

Although the Court of Appeals' decision remanded petitioner Wolfgang's qualified immunity claim for consideration by the trial court, it did so on terms that contravene the decisions of your Honorable Court and other Courts of Appeals. Those terms mandate that the trial court consider the claim under the Court of Appeals' rulings that Berg's arrest was entirely unconstitutional; that the warrant meant nothing; and that Berg's expert's report outlines factors under which petitioner Wolfgang's conduct can be adjudged unreasonable, 219 F.3d at 271, 273:

> Because the government officials who issued the warrant here did not have probable cause to arrest Berg, the arrest violated the Fourth Amendment. Accordingly, summary judgment should not have been granted based on the existence of the warrant.

* * *

> We think [Berg's expert's] report raises valid questions concerning the reasonableness of Wolfgang's conduct in this case.

The Court of Appeals should have sustained Wolfgang's immunity defense.

> The general rule of qualified immunity is intended to provide government officials with the ability "reasonably [to] anticipate when their conduct may give rise to liability for damages." *Davis [v. Scherer]*, 468 U.S. [183], at 195 [(1984)]. Where that rule is applicable, officials can know that they will not be held personally liable as long as their actions are reasonable in light of current American law.

Anderson, *supra*, 483 U.S. at 646.

Until the Court of Appeals rendered its decision more than six years after petitioner Wolfgang arrested Berg under the facially valid warrant, no reported decision handed down by your Honorable Court, by the Third Circuit, or by any other Court of Appeals indicated that warrant servers acted wholly at their peril in serving facially valid warrants and that they must independently investigate the bases on which those warrants issued. To the contrary, as delineated above, the reported cases indicated that those who were not involved in the production of flawed warrants could rely on facially valid warrants for the probable cause and the judicial command to arrest those named in the warrants, without the need to investigate protestations of innocence, and without concern for such mutable aspects as the arrestees' precise

abodes. Thus, under the law as it existed in 1994, when petitioner Wolfgang arrested Berg, the facially valid warrant gave him probable cause to effect the arrest and Wolfgang's conduct was objectively reasonable as a matter of law.

CONCLUSION

As to petitioner Wolfgang, the Court of Appeals' decision departs unwarrantedly from the principles and rulings that your Honorable Court, the Third Circuit, and the majority of other Courts of Appeals have followed and made for more than a decade. The decision's practical effect is to force those whose function is to execute warrants and other facially valid court directives either to question the bases for the issuance of those commands or to accept full responsibility for whatever errors might lurk beneath the faces of apparently valid warrants.

Because the Court of Appeals' decision as to petitioner Wolfgang is inimical to established Fourth Amendment jurisprudence and to the practical balances that your Honorable Court's and other courts' decisions have carefully and thoughtfully established, Wolfgang respectfully asks that your Court grant his cross-petition and issue its writ of certiorari to review, and ultimately to reverse, the decision of the Court of Appeals in this case.

Respectfully submitted,

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APPENDIX

APPENDIX — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA DATED SEPTEMBER 22, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 97-928

RAYMOND A. BERG, JR.,

Plaintiff,

– vs –

COUNTY OF ALLEGHENY, ALLEGHENY COUNTY ADULT PROBATION SERVICES, RICHARD A. GARDNER, GLENN ALLEN WOLFGANG and GINNY DEMKO,

Defendants.

AMBROSE, District Judge.

OPINION
and
ORDER OF COURT

Plaintiff Raymond A. Berg ("Berg") initiated this action against Allegheny County, Allegheny County Adult Probation Services, Richard Gardner, Ginny Demko ("the County Defendants") and Glenn Wolfgang,[1] for civil rights

1. While Berg also named Debbie Benton as a Defendant, all claims in this regard have been voluntarily dismissed.

violations arising from an erroneous arrest. Briefly, Berg, who had successfully completed his parole requirements related to a DUI charge, was rearrested on December 30, 1994, when a clerk inadvertently transposed two digits of a "Criminal Complaint Number." The warrant was originally requested for a Paul Banks. Berg was incarcerated for several days until the error was corrected.

Pending is Wolfgang's Motion for Summary Judgment (Docket No. 26). Wolfgang, the constable who arrested Berg, characterizes the claims as fatally deficient in that he served and executed a facially valid warrant. The warrant, Wolfgang maintains, gave him probable cause, so as to defeat Berg's constitutional claims.[2]

After careful consideration, and for the reasons set forth below, the Motion is granted and judgment is entered against Berg on all claims asserted against Wolfgang.

STANDARD

Summary judgment may only be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, show that there is no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Rule 56 mandates the entry of judgment, after adequate time for discovery and upon motion, against the party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on

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2. Because I agree with Wolfgang in this regard, I need not address his claim of qualified immunity.

which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In considering a motion for summary judgment, the court must examine the facts in the light most favorable to the party opposing the motion. *International Raw Materials, Ltd. v. Stauffer Chemical Co.*, 898 F.2d 946, 949 (3d Cir. 1990). The burden is on the moving party to demonstrate that the evidence is such that a reasonable jury could not return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material when it might affect the outcome of the suit under the governing law. *Id.* Where the non-moving party will bear the burden of proof at trial, the party moving for summary judgment may meet its burden by showing that the evidentiary materials of record, if reduced to admissible evidence, would be insufficient to carry the nonmovant's burden of proof at trial. *Celotex*, 477 U.S. at 322. Once the moving party satisfies its burden, the burden shifts to the nonmoving party, who must go beyond its pleadings, and designate specific facts by the use of affidavits, depositions, admissions, or answers to interrogatories showing that there is a genuine issue for trial. *Id.* at 324.

ANALYSIS

Berg seeks to impose liability under 42 U.S.C. § 1983 upon Wolfgang for violations of his constitutional rights to be free from false imprisonment, malicious prosecution and unlawful arrest.[3] To prevail upon each claim, Berg must

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3. Although the Complaint references 42 U.S.C. § 1985 as well, Berg does not allege that Wolfgang conspired in any manner to deprive Berg of his constitutional rights.

demonstrate, in part, that Wolfgang acted without probable cause in executing the warrant. *See Dowling v. City of Philadelphia*, 855 F.2d 136, 141 (3d Cir. 1988) (recognizing that "[t]he proper inquiry in a section 1983 claim based on false arrest or misuse of the criminal process is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense."); *Groman v. Township of Manalapan*, 47 F.3d 628, 636 (3d Cir. 1995) (stating that "[t]he Court in *Baker v. McCollan*, 443 U.S. 137, 142 (1979)] made it clear an arrest based on probable cause could not become the source of a claim for false imprisonment."); and *Hilfirty v. Shipman*, 91 F.3d 573, 579 (3d Cir. 1996) (stating that, to succeed on a § 1983 claim for malicious prosecution, the plaintiff must prove that "the proceeding was initiated without probable cause."). This, Wolfgang maintains, Berg is unable to do.

"Whether an officer had probable cause to believe an individual committed an offense is an objective test, based on the facts available to the officers at the moment of arrest." *Duffy*, 1998 WL 264144 at * 4, *citing*, *Barna v. City of Perth Amboy*, 42 F.3d 809, 819 (3d Cir. 1994). The Third Circuit court explains that:

> [p]robable cause to arrest requires more than mere suspicion, however, it does not require that the officer have evidence sufficient to prove guilt beyond a reasonable doubt. Rather, probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant

> a reasonable person to believe that an offense has been or is being committed by the person to be arrested.

Orsatti v. New Jersey State Police, 71 F.3d 480, 482-83 (3d Cir. 1995) (internal citations omitted); *see also Kis v. County of Schuykill*, 866 F. Supp. 1462, 1469 (E.D. Pa. 1994) (stating that "[p]robable cause to arrest exists where the arresting officer has knowledge of facts and circumstances sufficient to permit a prudent person of reasonable caution to believe that the person arrested has committed an offense."). "Sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment." *Hill v. California*, 401 U.S. 797, 804 (1971).

Here, the parties disagree as to whether Wolfgang had probable cause to arrest Berg. Wolfgang contends that the bench warrant constituted probable cause. Berg, in turn, challenges the validity of the warrant.[4]

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4. It is somewhat difficult to discern Berg's contentions in this regard. Most significantly, the only portion of his Brief in Opposition to Summary Judgment pertaining to the claims against Wolfgang is entitled "Is a Constable entitled to qualified immunity?" *See* Docket No. 30, p. 15. Nowhere does Berg explicitly address Wolfgang's contention that the existence of a facially valid warrant establishes probable cause, and precludes the violation of any underlying constitutional right. Resort need be made to a defense of qualified immunity only where there was no probable cause. In such an instance, an officer may nevertheless be shielded from liability if "a reasonable officer could have believed [the arrest] to be lawful, in light of clearly established law and the information the arresting officer possessed." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)

(Cont'd)

"It is well-settled that probable cause generally exists when a police officer makes an arrest pursuant to a warrant which meets the requirements of the Fourth Amendment." *Kis*, 866 F. Supp. at 1469, *citing*, *Baker*, 443 U.S. at 144 and *Graham v. Connor*, 490 U.S. 386, 389 (1989). "The arrest warrant must contain 'the name of the defendant or, if his name is unknown, any name or description by which he can be described with reasonable certainty." *Kis*, 866 F. Supp. at 1469, *quoting*, Fed. R. Crim. P. 4(c)(1). "[A] warrant that correctly names the person to be arrested generally satisfies the requirements of the Fourth Amendment . . . ." *Id.*, *citing*, *Powe v. Chicago*, 664 F.2d 639, 645 (7th Cir. 1981), and *Cooper v. City of Chester*, 810 F. Supp. 618, 621 (E.D. Pa. 1992).

Here, there is no dispute that the warrant properly set forth Berg's name. Nevertheless, Berg challenges the facial validity of the arrest warrant in two manners. First, he complains that the warrant was "dated" — it having been issued approximately 4 months prior to execution. Yet it is undisputed that the warrant remained in effect — that it had not been withdrawn. Indeed, Wolfgang confirmed the validity on two occasions. Moreover, Berg has not cited to any case law for the proposition that the validity of a warrant is somehow compromised if it is 4 months old. Consequently, I reject this challenge as unpersuasive.

(Cont'd)
(citations omitted). However, because Berg's contentions with respect to the doctrine of qualified immunity also make reference to the "facial validity of the warrant," I will consider his challenges in this regard to be made in response to Wolfgang's first argument regarding probable cause.

Second, Berg characterizes the warrant as invalid because it set forth an incorrect address. Yet, the Third Circuit court has opined that a mere technical error on the face of an arrest warrant does not automatically invalidate the warrant. *See United States v. Carter*, 756 F.2d 310 (3d Cir. 1985), *cert. denied*, 478 U.S. 1009 (1986). Indeed, the United States District Court for the Eastern District of Pennsylvania has specifically held that the listed address is irrelevant to the validity of a warrant. *See Cerva v. Fulmer*, 596 F. Supp. 86, 90 (E.D. Pa. 1984). Thus, I find Berg's challenges to be without merit.

Baker and its progeny suggest that the analysis would end here — Berg was arrested pursuant to a valid warrant and therefore no § 1983 claim can arise as against Wolfgang. Again, although it is in the context of refuting Wolfgang's invocation of the qualified immunity doctrine, Berg makes some assertions that may implicate the issue of probable cause. Specifically, Berg contends that his lack of flight, his possession of a valid drivers' license, his "socio-economic status", certain "court papers" and friends who had vouched for his innocence, should have caused Wolfgang to doubt the validity of the warrant. *See* Docket No. 30, p. 17-18.

While I am uncertain as to whether such contentions are relevant to the issue of probable cause when an arrest is made pursuant to a valid warrant, at least one court suggests that they are. *See Cooper v. City of Chester*, 810 F. Supp. 618 (E.D. Pa. 1992). In *Cooper*, the court determined that, aside from challenges to the validity of a warrant, a plaintiff may "question the constitutionality of the arrest itself." *Cooper*, 810 F. Supp. at 622. The Complaint in *Cooper* contained

averments that " 'Defendants knew, or upon minimal investigation could have determined that the plaintiff was not their man.' " *Id.*, *quoting*, Complaint, ¶ 6. The court thus surmised that "plaintiff has alleged that defendants deliberately arrested a person who they knew was not the subject of the warrant they were carrying. Such an arrest is without probable cause, and thus violates the fourth amendment." *Id.*

While it is not at all clear that Berg intended to raise such an argument, given that the relevant allegations were couched within a qualified immunity argument, I will give him the benefit of the doubt. Additionally, although research did not disclose any subsequent citation to the *Cooper* decision for the proposition recited above, I will presume that the *Cooper* court's analysis is sound. Despite these assumptions, however, I find Berg's protestations to be without merit.

It is well established that "a sheriff executing an arrest warrant is [not] required by the Constitution to investigate independently every claim of innocence, whether the claim is based on mistaken identity or a defense such as lack of requisite intent." *Baker*, 443 U.S. at 145-46. Indeed, as the Supreme Court recognized in *Hill v. California*, 401 U.S. 797, 803 (1971), many arrestees attempt to avoid arrest by producing false identification. Comments from Berg's friends that he was innocent are akin to the production of documents exonerating him. Consequently, I believe that reasonable jurors could only find that Wolfgang's apparent failure to give credence to certain documents and protestations of innocence did not, when he had a valid bench

warrant, amount to deliberately arresting a person who he knew was not the subject of the warrant.[5]

5. I find Berg's reference to "socio-economic status" to be misguided. Apparently, Berg would have this Court accept the proposition that only members of an economically depressed class would be the subject of a warrant. I decline to accept such a proposition. Additionally, Berg provides no citation to authority for the contention that his failure to flee would have compelled Wolfgang to question the accuracy of the warrant. Again, I find that reasonable jurors could only conclude that Wolfgang had probable cause to effectuate the bench warrant when he was certain of the warrant's validity.

Appendix

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 97-928

RAYMOND A. BERG, JR.,

Plaintiff,

– vs –

COUNTY OF ALLEGHENY, ALLEGHENY COUNTY ADULT PROBATION SERVICES, RICHARD A. GARDNER, GLENN ALLEN WOLFGANG and GINNY DEMKO,

Defendants.

AMBROSE, District Judge.

ORDER OF COURT

AND NOW, this 22nd day of September, 1998, after careful consideration of the submissions of the parties and for the reasons set forth within, it is hereby **ORDERED** that the Defendant's Motion for Summary Judgment (Docket No. 26) is **GRANTED**. Judgment is entered in **FAVOR** of Defendant Wolfgang, and **AGAINST** Plaintiff, on all claims.

BY THE COURT:

s/ Donetta W. Ambrose
Donetta W. Ambrose,
U.S. District Judge